

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1227 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and

MR.JUSTICE R.BALIA.

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJ

Versus

THAKOR PRABHULAL HARJIVANDAS

Appearance:

MR AJ DESAI, ASST. PUBLIC PROSECUTOR for Petitioner
MR HN JHALA for Respondent No. 1 WITH
MR MJ BUDHBHATTI.

CORAM : MR.JUSTICE N.J.PANDYA and

MR.JUSTICE R.BALIA.

Date of decision: 01/10/96

ORAL JUDGEMENT

(PER N.J. PANDYA, J)

1. The respondent was charged under Section 17 of the NDPS Act before the learned Additional Sessions

Judge, Palanpur, by way of Sessions Case No. 176 of 1990. By his judgement dated 30.1.1993, the learned Additional Sessions Judge was pleased to give benefit of doubt to the accused.

2. On receiving prior information, P.S.I. Mr. Pandey of Palanpur police station was waiting for a car in which opium was to be carried on. Accordingly on 22.7.1990 at about 5.00 p.m. or so, they saw a car coming and it being stopped, opium upto 4.6 Kg. was recovered and its driver, the present respondent, was apprehended.

3. At the time when the judgement came to be delivered by the learned Judge, law as to applicability of Section 50 and its consequences were hardly clear. Now it has been made absolutely clear by the pronouncement of the Supreme Court in State of Punjab vs. Balbirsingh (AIR 1994 SC 1872) that if an officer carries out search under Section 42, then he has to offer option to the person to be searched whether the person would like to be searched by the nearest gazetted officer or the nearest Magistrate. Clearly this has not been done. P.S.I. is not a gazetted officer, nor is he empowered by the State to carry out the activity under Section 41 of the NDPS Act. He is clearly an officer who does so under Section 42.

4. Provisions of Section 50 will therefore be attracted. This having not been complied with, the case of the prosecution will fail only on that account.

5. The learned trial Judge in his elaborate judgement has dealt with various circumstances as well which according to him has led to giving benefit of doubt to the accused. These circumstances relate to right from the time of intercepting the car upto the state of delivery of samples for analysis to Forensic Science Laboratory at Ahmedabad. At various stages, on different counts, as ably brought out in the judgement, the learned Judge, on careful analysis of the evidence led before him, has decided to give benefit of doubt.

6. As stated earlier, having made the said position under Section 50 clear, the learned Judge, we are sure, would have given clean acquittal to the accused. While confirming the judgement, we do so, and therefore, we dismiss the appeal. Bail bonds cancelled.

(devu)